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Gabriel S. Meyer  
Assistant General Attorney

February 20, 2008

**Via Electronic Filing**

Ms Anne K Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S W  
Washington, D C 20423

**RE: Docket No. STB No. AB-33 (Sub-No. 255), Union Pacific Railroad  
Company - Abandonment - In Carver and Scott Counties, Minnesota,  
(Chaska Industrial Lead)**

Dear Ms Quinlan

Attached, please find Union Pacific Railroad Company's Reply to protests submitted by United Sugars Corp and the United Transportation Union in the above-referenced matter.

Please do not hesitate to contact me if you have any questions

Sincerely,

A handwritten signature in cursive script, reading "Gabriel S. Meyer".

Gabriel S Meyer

Attachments

**Before the  
SURFACE TRANSPORTATION BOARD**

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**Docket No AB-33 (Sub-No. 255)**

**UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT AND DISCONTINUATION OF OPERATION--  
IN CARVER AND SCOTT COUNTIES, MINNESOTA  
(CHASKA INDUSTRIAL LEAD)**

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**REPLY TO PROTESTS OF UNITED SUGARS CORP.  
AND THE UNITED TRANSPORTATION UNION**

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**Dated February 20, 2008  
Filed February 20, 2008**

**Before the  
SURFACE TRANSPORTATION BOARD**

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**Docket No AB-33 (Sub-No 255)**

**UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT AND DISCONTINUATION OF OPERATION--  
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(CHASKA INDUSTRIAL LEAD)**

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**REPLY TO PROTESTS OF UNITED SUGARS CORP.  
AND THE UNITED TRANSPORTATION UNION**

**I. Introduction**

Union Pacific Railroad Company ("UP") files this Reply in response to protest statements submitted by United Sugars Corp ("United Sugars") and the United Transportation Union ("UTU"), regarding UP's proposed abandonment of the Chaska Industrial Lead (the "Line"). Because continued operation of the Line would impose a significant burden upon UP and little if any burden upon United Sugars, other shippers, and communities, UP respectfully requests that the Board find the public convenience and necessity permits UP to abandon the Line.

**II. Background**

UP filed its Application on December 13, 2007, seeking authority to abandon the Line, which extends from Milepost 38.6 at Merriam, Scott County, to Milepost 33.0 in Chaska, Carver County, a distance of 5.6 miles in the State of

Minnesota In its Application, UP demonstrated that the Line is a burden upon interstate commerce and to UP The Line is currently embargoed due to the flooding-related collapse of a bridge over a tributary of the Minnesota River in March, 2007 The bridge collapse cut off access to United Sugars, the Line's sole customer, which is located at the end of the Line, in Chaska.

The Line also includes a bridge across the Minnesota River that requires either substantial rehabilitation or replacement. The replacement of the destroyed bridge and the repair or replacement of the Minnesota River Bridge are expected to total as much as \$8.8 million Additional bridge and track-related expenditures may further increase the total cost of rehabilitating the Line to FRA Class 1 standards to more than \$10 million

Given the Line's limited traffic base and the low likelihood of additional traffic, it is very unlikely that UP would ever be able to recoup the multi-million dollar investment required for the Line's continued operation. At the same time, in the event of abandonment there will be very little, if any, burden to United Sugars, the Line's sole active user at the time of the embargo. Since the embargo, United Sugars has continued to ship to its Chaska facility using motor transport

The Board published a Federal Register notice in this matter on January 2, 2008, and served an Environmental Assessment on January 15, 2008 United Sugars and the UTU filed Protests in opposition to the proposed abandonment on January 25, 2008.

### **III. Argument**

In considering rail line abandonments, the Board weighs the railroad's burden of continued operations against the burden to shippers and affected communities resulting from the loss of rail service. If the railroad's burden is greater, then abandonment authority will be granted.<sup>1</sup> Neither protestant has contradicted UP's evidence showing that continued operation of the Line will impose a substantial burden upon UP and interstate commerce. Nor has either protestant provided evidence showing that the burden to shippers and impacted communities outweighs the burden to UP and interstate commerce.

**a. Continued operation of the Line would impose a substantial burden upon UP and interstate commerce.**

In its Application, UP provided uncontested evidence that restoring the Line to service would require replacing the destroyed bridge and replacing or repairing the Minnesota River Bridge, at a combined approximate cost of \$4.3 million to \$8.8 million. Additional bridge work and restoration of the Line's track structure to FRA class 1 standards would increase total rehabilitation costs to \$5.9 million to more than \$10 million.

These multi-million dollar rehabilitation costs are not a "relatively light burden" as United Sugars claims (United Sugars Protest, at 7). They are substantial, and UP would be very unlikely to ever recover them, given the low traffic volumes and revenues that the Line generates. As UP stated in its Application, during the Base Year leading up to UP's embargo of the Line, United

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<sup>1</sup> E.g., Colorado v. United Sugars States, 271 U.S. 153 (1926) Union Pacific Railroad Company—Discontinuance in Utah County, Utah, STB Docket No. AB-33 (Sub No. 209) (STB served Jan. 2, 2008), at 6.

Sugars shipped a total of 764 rail cars over the Line. If the Line were restored to service, UP expects that United Sugars would ship this same traffic volume during the Forecast Year. Neither United Sugars nor the UTU contradicts this information. Furthermore, as UP's witness Brian Mahaffey notes in his attached Verified Statement, traffic levels could fall, as neither United Sugars, nor any other potential customer, have committed to shipping specified levels of traffic over the Line.<sup>2</sup> If United Sugars were to discontinue shipment of its remaining traffic, UP would be left with no means to even partially recover its multi-million dollar expenditures needed to restore operations over the Line.

**b. Abandonment of the Line would impose little or no burden upon affected shippers and communities.**

Neither protestant has shown that the proposed abandonment would adversely affect United Sugars, other shippers, or local communities. As a result, it appears the abandonment would impose little or no burden upon them.

United Sugars claims that if it "is forced to move the same volume of sugar, via truck from the same origins as it did by rail in 2006, United Sugars' transportation costs will be increased by \$1.6 million . . ." (Glass VS at 1-2 ). But United Sugars own Protest shows that it is not moving "the same volume of sugar via truck from the same origins as it did by rail in 2006." (Id.) Since the embargo, United Sugars' shipping patterns have changed significantly. United Sugars' witness, Lee Glass, states that since rail service ended, United Sugars

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<sup>2</sup> See Boston and Maine Corporation—Abandonment—In Essex County, MA, and Rockingham County, NH, STB Docket No. AB-32 (Sub-No. 90) (STB served Oct. 3, 2001), at 6 ("There is no evidence to refute the fact that rehabilitation of the line . . . would require an expenditure that cannot be justified by the limited and speculative future profitability of the line.")

has discontinued shipments from four facilities to Chaska, MN.<sup>3</sup> He does not provide any information in his statement on how these changes have affected United Sugars' transportation costs.

Of further note, in an article about UP's proposed abandonment, published in the Minneapolis/St. Paul area newspaper, the *Star Tribune*, after United Sugars filed its Protest, a United Sugars spokesperson indicated that the company is "making do" with motor carrier transport.<sup>4</sup> A copy of the article is attached as Exhibit 1 to this Reply

United Sugars also cites Indiana Sugars, Inc v I C C, in which the U S Court of Appeals for the Seventh Circuit remanded an abandonment decision to the ICC for reconsideration Indiana Sugars, Inc v. I C.C, 694 F 2d 1098, 1101 (7th Cir. 1982). The Court found that the ICC had relied upon "extremely unpersuasive evidence" of suitable transportation alternatives for the shipper affected by the abandonment, and stated, "There was no convincing demonstration that any motor carriers were in a position to provide the necessary volume of equipment to handle this traffic." Id. In contrast, in the instant matter, motor carrier operators provide a suitable alternative to rail transportation, as evidenced by United Sugar's ongoing movement of goods and materials to its Chaska facility via truck.<sup>5</sup>

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<sup>3</sup> Specifically, Mr Glass states that United Sugars has discontinued shipments from facilities located in Drayton, ND, Hillsboro, ND, East Grand Forks, MN and Sydney, MT

<sup>4</sup> David Peterson, *Bikers, hikers may profit from rail bridge's demise*, STAR TRIBUNE, Jan. 26, 2008, available at <http://www.startribune.com/local/south/14457432.html>

<sup>5</sup> The Indiana Sugars Court also referenced language then contained in 49 U S C 10101(a)(1) providing for regulations recognizing and preserving "the

And, in a subsequent decision upholding an ICC grant of abandonment authority, the Seventh Circuit made this same distinction People of State of Ill. v. I.C.C., 751 F.2d 903 (7th Cir. 1985). The Court observed, "[T]he record shows the existence of motor transportation which is actually being used by the shippers, rather than the merely theoretical availability of motor carriers." Id. at 905 (emphasis added).

**c. The burden upon UP and interstate commerce of continued operation of the Line outweighs the burden of abandonment to affected shippers and communities.**

As thoroughly documented in UP's Application, and as explained above, restoring and maintaining service over the Line would cost UP \$5.9 million to more than \$10 million. On the other hand, the cost of abandonment to United Sugars, other shippers, and surrounding communities appears to be little if anything. Because neither protestant submitted cost evidence, the exact cost is unknown. Furthermore, if UP were to restore service over the Line, and United Sugars were to subsequently discontinue shipments by rail, UP's burden would be even greater. Neither United Sugars, nor any other customer, have made long-term commitments to continue shipping over the Line, raising the possibility that all rail traffic over the Line could cease. As a result of UP's proven burden, which greatly exceeds any burden to shippers and affected communities, the public convenience and necessity permits UP to abandon the Line.

**d. Other matters.**

The UTU claims that the bridge collapse was the result of deferred maintenance. This is false. UP properly maintained its bridge, and the March

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inherent advantage of each mode of transportation." This language no longer



2007 bridge collapse was the result of flooding conditions. Although the UTU contends that "on-site evidence and witness statements" suggests otherwise (UTU Protest at 7), it offers no evidence to support this baseless contention

The UTU further suggests that UP deliberately downgraded the Line in an attempt to ultimately abandon it <sup>6</sup> Again, the UTU offers no evidence to support its claim. In fact, UP operated and maintained the Line consistent with maintenance needs and traffic levels

Finally, the UTU claims that part of the Line is used for movement of overhead traffic. The Line cannot be used for overhead traffic, because it stub-ends at Chaska.<sup>7</sup> The UTU appears to be referring to the fact that a portion of the Merriam wye track, which is adjacent to a small switching yard located in Merriam, has at times been used for yard switching operations

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applies to regulation of railroads.

<sup>6</sup> The ICC has held:

*Deliberate downgrading occurs when a carrier actively discourages existing or potential traffic on a viable line simply to facilitate its abandonment. While a carrier may not reduce service or defer maintenance to suffocate a viable service, it can economize by cutting its costs if its actions are directed at preserving rail service*  
Missouri Pacific Railroad Company—Abandonment—Miami, Franklin, and Osage Counties, KS, Docket No AB-3 (Sub-No 115) (I.C.C. served December 14, 1994).

UP neither sought to discourage business, or turn away traffic through deferring maintenance.

<sup>7</sup> The Line beyond Chaska was abandoned approximately 20 years ago Chicago and North Western Transportation Company—Abandonment and Discontinuance of Trackage Rights—Between Hopkins and Chaska, MN, Docket No AB-1 (Sub-No 206), ICC served Feb 4, 1988

#### **IV. Conclusion**

**The burden upon UP and interstate commerce from continued operation of the Chaska Industrial Lead substantially outweighs any burden of abandonment upon affected shippers and communities. As a result, UP respectfully requests that the Board find that the public convenience and necessity permits abandonment of the Chaska Industrial Lead.**

**Dated this 20th day of February, 2008**

**Respectfully submitted,**

**UNION PACIFIC RAILROAD COMPANY**



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## **VERIFIED STATEMENT OF BRIAN MAHAFFEY**

My name is Brian Mahaffey. I previously submitted a Verified Statement as part of Union Pacific Railroad Company's ("UP's") Application for authority to abandon its Chaska Industrial Lead (the "Line"), filed on December 13, 2007. In this Verified Statement, I respond to protests filed by United Sugars Corporation ("United Sugars") and the United Transportation Union (the "UTU"), in response to UP's application.

### **I. The Line's traffic levels are unlikely to increase.**

During the year prior to the Line's embargo, United Sugars, the Line's sole customer, shipped 764 cars over the Line. I believe that if UP restored service over the Line, United Sugars in the short term would move no more than this level of traffic. However, United Sugars has not committed to shipping any particular level of traffic over the Line, creating the possibility that it could decrease or even eliminate its shipment of rail traffic over the Line. Other than United Sugars, the Line does not serve any shippers who are likely to request rail service in the future.

### **II. United Sugars has altered its shipping patterns since UP embargoed the Line.**

United Sugars claims in its Protest that, "If United Sugars is forced to move the same volume of sugar via truck from the same origins as it did by rail in 2006, United Sugars' transportation costs will be increased by \$1.6 million." "(Glass VS at 1-2.) However, United Sugars' own Protest shows that it is not

moving "the same volume of sugar via truck from the same origins as it did by rail in 2006 " It has, in fact, changed its shipping patterns and has discontinued shipments from four of the seven supply points that it previously received shipments from via rail. Prior to the embargo, United Sugars received materials from facilities at Drayton, Hillsboro, and Wahpeton, ND, East Grand Fork, Crookston, and Moorhead, MN, and Sidney, MT Since the embargo, United Sugar no longer receives materials from Drayton, Hillsboro, East Grand Forks, and Sidney (Id. at 1.)

Mr Glass does not specify how these changes have affected his shipping costs It is impossible to determine from his statement what additional shipping costs, if any, United Sugars has experienced as the result of the embargo

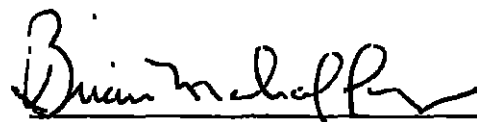
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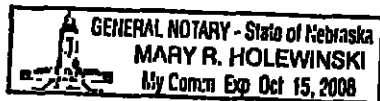
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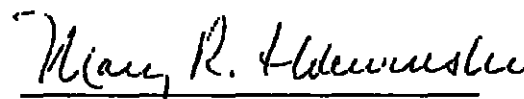
COUNTY OF DOUGLAS

Brian Mahaffey, being first duly sworn, deposes and states that he has read the above document, knows the facts asserted therein, and that the same are true as stated

  
Brian Mahaffey



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# Bikers, hikers may profit from rail bridge's demise


The bridge fell into the Minnesota River last year, and some see an opportunity to create a scenic corridor linking Carver and Scott counties.


By **DAVID PETERSON**, Star Tribune


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The *other* Minnesota bridge collapse of 2007 -- the one that wiped away a railway bridge near Chaska -- may now be creating a major new scenic corridor for bikers and hikers in the southwest metro.

But it is also stranding a company with deep roots in the region's history -- one that has supplied liquid sugar to generations of American cereal bowls.

Thanks in part to flooding on the Minnesota River, a bridge along a 5-mile spur line that long connected a historic sugar plant in Chaska to the outside world, crumbled in March.

Now, the railroad that owns the line is asking the federal government for permission to walk away from it. Union Pacific says it can't afford to rebuild the bridge and maintain the line just for one remaining client.

That, in turn, has led a coalition of government agencies to try to amass the resources it would take to turn the old railway line into something else.

The line would provide a scenic river-leaping link to create a huge loop for bikers and hikers in two fast-growing suburban counties -- Carver and Scott -- where there is now only a dead end.

"Suddenly, a regional trail that just stops now in Chaska would extend all the way into another county, with great views and vistas as it passed over the river," said Kevin Ringwald, planning director in Chaska. "People don't want to just stop at the end and retrace their path. They like big loops."

All the plans depend on the willingness of an obscure federal agency called the Surface Transportation Board to let Union Pacific walk away from the spur line. But that is likely to be approved, said Mark Davis, director of corporate relations and media for the railway.

"The line itself, with one customer, is marginal at best when it comes to supporting itself," he said. "Now, with the bridge replacement, it would be cost prohibitive."

The most likely opponent to its abandonment would be United Sugars Corp., the company that runs the plant. One of that company's three corporate owners is American Crystal Sugar in Moorhead, Minn., the nation's largest beet sugar manufacturer.

That company's spokesman, Jeff Schweitzer, declined to say whether the firm intends to fight the abandonment. It is making do today with trucks, he said, and is in discussions with the railway about what happens next.

In the meantime, the Metropolitan Council and the cities and counties closest to the line are teaming up, Ringwald said, in hopes of accomplishing together a project that "is probably too big for any one of us to deal with alone."

The line leads from Chaska to its fast-growing outlying neighbor, the city of Carver, and that link alone would be a big deal for the area, Ringwald said. And for Chaska itself, the potential exists for a 100-

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foot-wide corridor that now runs straight through town to become the site of new housing, with the trail shifted to one side.

The development raises questions as well about the corridor's potential use by light rail or other rail transit. But the Met Council document downplays that possibility, saying the new Hwy 212 corridor is a likelier route for that.

If little is settled for the moment, Ringwald said, the possibilities are encouraging.

"I'm excited we've been able to pull this group together. Hopefully we'll keep the energy going."

David Peterson • 952-882-9023

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served via first class mail, postage prepaid, upon all parties of record in Docket No. STB No AB-33 (Sub-No 255), on the 20th day of February, 2008

Dated this 20th day of February, 2008



Gabriel S Meyer